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FILED
2008 JUN -5 PM 3:41
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

Attorneys for TWENTY-NINE PALMS BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TWENTY-NINE PALMS BAND OF MISSION INDIANS, a federally recognized Indian Tribe, Plaintiff, v. ARNOLD SCHWARZENEGGER, GOVERNOR OF THE STATE OF CALIFORNIA, in his official capacity as Governor of the State of California; EDMUND G. BROWN, JR., ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, in his official capacity as Attorney General of the State of California, Defendant.	Case No. '08 CV 1011 W JMA COMPLAINT FOR: (1) BREACH OF TRIBAL COMPACT (2) BREACH OF CONTRACT FOR THE BENEFIT OF THIRD PARTY BENEFICIARY (3) BREACH OF CONTRACT FOR VIOLATION OF FEDERAL RIGHTS (4) DECLARATORY RELIEF

Plaintiff, Twenty-Nine Palms Band of Mission Indians (hereafter "Plaintiff" or the "Tribe") alleges:

JURISDICTION AND VENUE

1. Plaintiff is and at all times mentioned herein was a federally recognized Indian Tribe based in the State of California.

2. The jurisdiction of this Court over the subject matter of this action is predicated on: 28 USC § 1291; 28 USC § 1362; 25 USC § § 2701 et seq. ("IGRA"); and State pendent jurisdiction. The Indian Commerce Clause of the United States Constitution (Art. I, 8, Clause 3); 28 USC § 2281 (Washington et al. v. Confederated Tribes of the Colville Indian Reservation et al., 447 US 134; 100 S. Ct. 2069; 65 L. Ed.2d 10; the Supremacy Clause of the U.S. Constitution, Art. VI, Clause 2; Goosby v. Osser, 409 US 512, 518 (1973); and Section 9.0 et seq. entitled "DISPUTE RESOLUTION PROVISIONS" in the Tribal Compact more specifically described below.

3. Venue in the Central District is proper because the events or omissions giving rise to the claim occurred (and are occurring) in this District. Specifically, the Tribe and the Tribe's Casino, which is the subject of this Complaint are located in the County of Riverside, which lies within the jurisdiction of this District.

4. The Tribe has exhausted all of its administrative remedies including its completion of the meet and confer requirements under the Tribal Compact as described below.

THE PARTIES, THE COMPACT AND THE CASINO

5. This case centers around the terms of a "Tribal Compact" for Class III gaming entered into between the Tribe and the State of California on or about October 8, 1999, and State taxation of income from a Casino operated on the Reservation of the Tribe in Coachella, California. The central issue in dispute is whether the State can impose California state personal income tax, or PIT, upon income generated by the Tribe from operation of the Casino and distributed to the Members of the Tribe pursuant a "Revenue Allocation Plan" approved by the United States Bureau of Indian Affairs pursuant to the federal Indian Gaming Regulatory Act, and/or upon compensation paid to Members working at the Casino.

6. The Tribe is an Indian tribe federally recognized tribe by the Secretary of the Interior of the United States of America.

7. Arnold Schwarzenegger is the Governor of the State of California and Edmund G. Brown, Jr. is the Attorney General of the State of California and they are sued in their official capacities as officers and representatives of the State of California.

8. The members of the Tribe ("Members") are third party beneficiaries of the Tribal Compact.

9. The Tribe is quite small and has only twelve Members who are over the age of 18 years.

10. The Tribe occupies certain real property located in Coachella, California (in Riverside County) and comprising a federal recognized Indian Reservation (the "Reservation") pursuant to 25 U.S.C. § 2703(4).

11. Pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, modified at 18 USC § 1166 et seq. and 25 USC § 2701 et seq.) (and any successor statute of amendments, hereinafter "IGRA"), the Tribe and the State entered into the Tribal-State Gaming Compact between the Tribe and the State of California regarding Class III Gaming (the "Tribal Compact"). The Tribal Compact is attached hereto as Exhibit 1.

12. Pursuant to the Tribal Compact the Tribe is authorized to operate a Class III gaming casino on the Tribe's Reservation located in Coachella, California. At all relevant times herein, the Tribe has operated such a casino pursuant to IGRA and the Tribal Compact (the "Casino"). The Tribe operates the Casino through the Tribe's wholly owned federal corporation chartered under the provisions of 25 U.S.C. § 477 (the "Tribal Corporation").

13. In accordance with IGRA, periodically the Tribe prepares and submits the Federal Bureau of Indian Affairs ("BIA") a detailed financial plan for the Casino that is approved and monitored by the BIA. This plan is called a Revenue Allocation Plan (the "RAP"). The RAP of the Tribe has detailed funding requirements and financial allocation provisions. As required by IGRA, the RAP provides for per capita distributions to Members of the Tribe and takes into consideration, among other things, the Members' obligations to pay federal income taxes with respect to the per capita payments made under the RAP. The RAP does not take into consideration California personal income tax ("PIT"), which the State of California seeks to impose on the Members.

14. The economic viability of the Casino is the lifeblood of the Tribe and its Members. The Casino, the Tribe and its Members function as one economic unit.

15. There is no housing on the Reservation, nor has there been any housing on the Reservation at any of the relevant times herein. It would be very difficult to put housing on the Reservation. The Casino and its parking lot take up all of the Tribe's space in Coachella. The other parcel included in the Reservation in Coachella, California comprises approximately 92 acres and is located across the Interstate-15 freeway away from the Casino and near a sanitation plant. The effluent from the plant flows through a canal next to the 92-acre parcel. As a practical matter, the Reservation cannot be used for homes or the raising of families. Because of the inability of the Tribe to provide housing to its Members on the Reservation, the Members have been forced to live off the Reservation. The Tribe takes the additional off-Reservation housing costs into account when it establishes its payments pursuant to the RAP.

16. The Tribal Compact contains a number of promises between the parties. The essence of the Tribal Compact is that the Tribe will pay the State millions of dollars per year in licensing fees and, in return, the Tribe is to operate the Casino in accordance with the Tribal Compact provisions and IGRA.

17. Section 10.3(c) of the Compact provides:

> "As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the Tribe, the Tribal Gaming operations shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code, and shall

forward such amounts as provided in said Codes to the State."

18. The Tribal Compact, taken as a whole, in the context in which it was negotiated, constituted a negotiated elimination of PIT for Members' income derived from employment relative to Casino and relative to per capita distributions pursuant to the RAP.

19. A number of the Members are employed by the Tribe relative to issues involving the Casino.

20. The RAP is a tribal law and rule.

FIRST CAUSE OF ACTION

(Breach of Tribal Compact)

21. Plaintiff repeats and realleges herein paragraphs 1 through 20.

22. Defendants have breached the Compact by seeking to impose PIT on Members with respect to per capita distributions made in accordance with the RAP.

23. Defendants have breached the Compact by seeking to impose PIT on Members with respect to income earned by them from employment at the Casino.

SECOND CAUSE OF ACTION

(Federal Preemption)

24. Plaintiff repeats and realleges herein paragraphs 1 through 23.

25. Imposition of PIT with respect to per capita distribution to Members in accordance with the RAP disrupts and infringes upon tribal sovereignty.

26. Imposition of PIT with respect to compensation of Members earned from employment at the Casino disrupts and infringes upon tribal sovereignty.

27. The State's effort to impose PIT on the Members is preempted by Federal law under the U.S. Constitution's Indian Commerce Clause, Art. I, § 8, Clause 3; the U.S. Constitution's Supremacy Clause; and IGRA.

THIRD CAUSE OF ACTION

(Income of the Members Is Exempt From
PIT Under California State Income Tax Law)

28. Plaintiff repeats and realleges herein paragraphs 1 through 27.

29. The operation of gaming on the Reservation by the Tribe, the Tribal Corporation and its Members to produce Class III Gaming Income (the "Operation") is a business, financial operation or venture.

30. The Tribe, the Tribal Corporation and the Members of the Tribe are associated together as co-owners for profit in a syndicate, group, pool, joint

venture or other unincorporated organization through or by means of which the Operation is carried on.

31. The Operation is a separate, unincorporated business entity for purposes of the PIT.

32. The Operation is not an entity required to be treated as an association taxable as a corporation for purposes of the PIT.

33. The Operation is not a trust or estate for purposes of the PIT.

34. The Operation is a separate entity required to be treated as a partnership for purposes of the PIT.

35. The Operation and each of its constituents, including the Tribe, the Tribal Corporation, are persons authorized in accordance with IGRA to conduct the Class III gaming operation on the Reservation, including the Casino.

36. Pursuant to IGRA Section 2710(d)(4), Class III gaming income from the Operation of the Tribe, the Tribal Corporation and each such an authorized person is exempt from state taxation, including PIT, unless otherwise agreed to by the Tribe.

37. The Tribe has not agreed to the imposition PIT on Class III gaming income from the Operation of the Tribe, the Tribal Corporation or any such authorized person.

38. Pursuant to fundamental principles of partnership taxation, the character of such Class III Gaming Income as exempt from PIT is determined at the level of the Operation as a separate entity treated as a partnership for income tax purposes.

39. Pursuant to fundamental principles of partnership taxation, the character of income from the Operation as exempt from PIT flows through to the Members with respect to each Member's share of such income, and such income remains exempt from PIT in the hands of the Members when allocated to them and when received by them as per capita distributions pursuant to the RAP.

40. Each Members' share of the income from the Operation increases the tax basis of the Member's interest in the Operation.

41. Per capita distributions to Members of income from the Operation pursuant to the RAP are distributions by a partnership to a partner for federal and California income tax purposes as described in Section 731 of the United States Internal Revenue Code.

42. Per capita distributions to a Member of income from the Operation pursuant to the RAP are applied to the basis of the Member in such Member's interest in the Operation.

43. The increase in of a Member's basis in the Operation from allocation to the Member of income from the Operation offsets per capita distributions from the Operation pursuant to the RAP, and consequently such per capita distributions are not taxable to the Members.

44. Compensation of a Member earned from employment at the Casino constitute guaranteed payments made by the Operation to such Member within the meaning of Section 707(c) of the United States Internal Revenue Code; the character of such guaranteed payments (including its character as income exempt from California income taxation) is determined with reference to the exempt character of the income of the Operation from the Casino; and therefore such compensation us exempt from PIT.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment as follows:

1. An order from the Court enjoining the state from imposing PIT on the Tribe's Members during any tax year since 2000;

2. Costs of suit; and

3. Such other orders and directives that the Court considers just and proper.

Dated: June 5, 2008

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By ______________________
RICHARD M. FREEMAN
MATTHEW S. MCCONNELL

Attorneys for TWENTY-NINE PALMS BAND OF MISSION INDIANS

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 2008 JUN -5 PM 3:41
CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

I. (a) PLAINTIFFS
TWENTY-NINE PALMS BAND OF MISSION INDIANS

DEFENDANTS
ARNOLD SCHWARZENEGGER, (see attached)

(b) County of Residence of First Listed Plaintiff Riverside
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant ______
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Sheppard Mullin Richter & Hampton, LLP
12275 El Camino Real
Suite 200
San Diego, CA 92130
858-720-8900

Attorneys (If Known)

'08 CV 1011 W JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury— Med. Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus – Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
see attached 25 USC § 2701

Brief description of cause:
see attached

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE
June 5, 2008

SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # 151667 AMOUNT $350 APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

TAC 6/5/08

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Attorneys for TWENTY-NINE PALMS BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TWENTY-NINE PALMS BAND OF MISSION INDIANS, a federally recognized Indian Tribe,

Plaintiff,

v.

ARNOLD SCHWARZENEGGER, GOVERNOR OF THE STATE OF CALIFORNIA, in his official capacity as Governor of the State of California; EDMUND G. BROWN, JR., ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, in his official capacity as Attorney General of the State of California,

Defendant.

The jurisdiction of this Court over the subject matter of this action is predicated on: 28 USC § 1291; 28 USC § 1362; 25 USC § § 2701 et seq. ("IGRA"); and State pendent jurisdiction. The Indian Commerce Clause of the United States Constitution (Art. I, 8, Clause 3); 28 USC § 2281 (Washington et al. v. Confederated Tribes of the Colville Indian Reservation et al., 447 US 134; 100 S. Ct. 2069; 65 L. Ed.2d 10; the Supremacy Clause of the U.S. Constitution, Art. VI, Clause 2; Goosby v. Osser, 409 US 512, 518 (1973); and Section 9.0 et seq. entitled "DISPUTE RESOLUTION PROVISIONS" in the Tribal Compact more specifically described below.

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 151667 - TC

June 05, 2008
15:43:35

Civ Fil Non-Pris
USAO #.: 08CV1011
Judge..: THOMAS J WHELAN
Amount.: $350.00 CK
Check#.: BC634012

Total-> $350.00

FROM: TWENTY NINE PALMS BAND OF
MISSION INDIANS VS.
ARNOLD SCHWARZENEGGER